

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MICHAEL J. HOGAN,)	
)	
Petitioner,)	
)	
v.)	Docket No. 11229-15
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Tampa, Florida, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, an appropriate Order will be issued.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
November 19, 2019

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 October 30, 2019
3 Michael J. Hogan v. Commissioner
4 Docket No. 11229-15

5 THE COURT: The Court has decided to render oral
6 findings of fact and opinion in this case and the
7 following represents the Court's oral findings of fact and
8 opinion (bench opinion). Section references made in this
9 bench opinion are to the Internal Revenue Code of 1986, as
10 amended, in effect for the relevant period, and Rule
11 references are to the Tax Court Rules of Practice and
12 Procedure. This bench opinion is made pursuant to the
13 authority granted by section 7459(b) and Rule 152.

14 This bench opinion is made pursuant to the
15 authority granted by section 7459(b) and Rule 152. The
16 order to be entered in this case resulting from this bench
17 opinion shall not be treated as precedent for any other
18 case, and except as provided in Rule 152(c), this bench
19 opinion shall not be cited as authority.

20 This section 6404(h) case is now before the
21 Court on respondent's second motion for partial summary
22 judgment, filed August 28, 2017 (summary judgment motion),
23 and respondent's motion to compel production of documents,
24 filed September 1, 2017 (motion to compel).

25 Petitioner has objected to both motions.

1 By Order dated August 24, 2018, both motions
 2 were assigned to me for disposition. See sec.
 3 7443A(b) (7); Rule 180. By Order dated June 12, 2019, the
 4 motions were set to be heard in Tampa, Florida on October
 5 29, 2019, which is where petitioner requested place of
 6 trial.

7 The case was called for hearing as scheduled.
 8 Jeremy D. Cameron appeared on behalf of respondent and
 9 argued in support of both motions. Michael J. Hogan
 10 appeared on his own behalf and opposed both of them.

11 The procedural history of this case and the
 12 underlying facts that gave rise to it, are well known to
 13 both parties and set forth in an Order dated March 16,
 14 2017, that resolves respondent's prior motion for partial
 15 summary judgment, filed June 2, 2016. We see no point in
 16 repeating that history in its entirety here. Instead, we
 17 will recite only the procedural history and those facts,
 18 all undisputed, that are most relevant to the matters now
 19 before us.

20 Given the nature of relief contemplated in
 21 section 6404(e), the petition, filed May 1, 2014, is not
 22 as precise as we would like. It seems that petitioner is
 23 seeking relief from interest that has accrued and might
 24 still be accruing on his 1994 and 1995 Federal income tax
 25 liabilities. We are unsure of what period for either year



1 petitioner is seeking an abatement of interest or any
2 refund of any interest already paid, but it is now
3 established from the March 16, 2016, Order that he is not
4 entitled to an interest abatement for either year at least
5 through the dates the returns were filed through September
6 2, 1997.

7 In respondent's summary judgment motion,
8 respondent now requests the Court to deny petitioner's
9 claim with respect to both years from September 3, 1997,
10 through November 21, 2000. The latter date is the date
11 that the parties agree that criminal proceedings relating
12 to the years 1994 and 1995 terminated. According to
13 respondent, any delays to resolve petitioner's 1994 and
14 1995 Federal income tax liabilities during that period
15 were neither unreasonable nor attributable to a
16 ministerial act, but rather due to the pendency of
17 criminal tax proceedings. Respondent's position certainly
18 finds support in cases such as Badaracco v. Commissioner,
19 464 U.S. 386 (1984) and Taylor v. Commissioner, 113 T.C.
20 206 (1999), and petitioner is otherwise unable to point
21 out any delay attributable to a ministerial act that
22 caused any delay while the criminal tax proceedings were
23 pending.

24 Respondent's summary judgment motion will be
25 granted, and we turn our attention to respondent's motion

1 to compel.

2 In that motion respondent seeks production of
3 documents identified in respondent's first request for
4 production of documents served on petitioner on June 15,
5 2017 (document request). Petitioner acknowledges the
6 existence of documents requested by respondent, but at the
7 hearing argued that he should not have to produce the
8 documents prior to trial. Petitioner's position is
9 unavailing and contrary to the Courts' rules.

10 We note that the some of the categories of
11 documents requested by respondent would seem necessarily
12 to overlap. That being so, we will require production of
13 documents identified in numbered paragraphs 4 and 5 of
14 respondent's document request. Documents described in
15 numbered paragraph 6 might not be duplicative of documents
16 otherwise described in the document request, so petitioner
17 will be required to respond to that request as well.

18 An Order will be issued that takes into account
19 the foregoing, the age of this case, petitioner's health
20 issues, and his request for a response period.

21 This concludes the Court's bench opinion in this
22 matter.

23 (Whereupon, at 9:52 a.m., the above-entitled
24 matter was concluded.)

25